

¹ K.S.A. 1999 Supp. 44-534a(a)(2) and K.S.A. 1999 Supp. 44-551(b)(1).

FINDINGS OF FACT

1. On September 4, 1998, claimant was employed by respondent as a security guard. On that date, while patrolling the parking lot performing her regular job duties for respondent, she stepped on a rock and twisted her leg, injuring her right groin area. She first was seen by her family physician, Dr. Bryon S. Bigham. He initially diagnosed a groin pull although the September 10, 1998 Horton Community Hospital Emergency Room Report shows claimant also had symptoms going into the buttock.

2. Claimant was also provided authorized medical treatment with Dr. Nadeem Sufi which included a physical examination and x-rays. The x-rays were normal. The September and October medical records do not reflect that claimant had any back complaints, although claimant testified she did. Dr. Sufi's medical records show that he diagnosed a right groin strain and prescribed medication, physical therapy and kept claimant off work. She also was seen by Dr. Teter for an orthopaedic consult.

3. Dr. Sufi released claimant to return to work on October 9, 1998. Claimant worked three days and returned to Dr. Sufi on October 12, 1998 complaining of worsened symptoms. Claimant was given pain medication, physical therapy and instructed to return in one week. If not better in two weeks, claimant was to get a second opinion from an orthopaedic surgeon. Claimant did not improve and was referred to Dr. Michael L. Smith.

4. Claimant continued off work until her appointment with Dr. Smith on November 3, 1998. His records show claimant had right groin discomfort associated with some low back pain and tingling in the right leg. An MRI of the lumbar spine was taken November 11, 1998 that showed some mild degenerative changes with minimal canal stenosis at L4-5 and L5-S1. Dr. Smith opined that claimant's symptoms were related to her low back. Epidural injections were attempted but with only temporary improvement. Because of this, Dr. Smith ordered a CT myelogram in January 1999. This showed foraminal narrowing at L4-5 and L5-S1. He recommended surgery, but this procedure was not approved by the workers compensation insurance carrier.

5. Claimant denies any non-work related aggravation of her condition, but in early December 1998 claimant admits she aggravated her back and right leg symptoms doing the prescribed exercises. At his December 22, 1998 exam, Dr. Bigham found claimant to have a positive straight leg raise on the right and complaints of back pain. Dr. Bigham took claimant off work from December 22, 1998 to January 6, 1999. Then in January 1999 she again experienced a worsening of her symptoms. Claimant also started to have bladder control problems. Claimant attributed this worsening to work, but Dr. Bigham's January 5, 1999 office notes reflect that claimant called and reported a worsening of symptoms after she helped her husband lift some things. Claimant was again taken off work following her January 5, 1999 examination by Dr. Smith.

6. At the request of Hartford, claimant was seen by Dr. Jeffrey T. MacMillan on February 4, 1999. At that time, claimant was complaining of an aching and burning in her low back radiating into her right buttock and a stabbing pain radiating from the right buttock into the right groin. Claimant also described numbness radiating down the right leg into the foot. Dr. MacMillan diagnosed groin pain (resolved), low back pain and right S1 radiculopathy. He suggested claimant obtain an EMG and nerve conduction studies, a trial TENS unit and functional capacity evaluation with reliability testing. Dr. MacMillan recommended against surgery. He also questioned the causal connection between her September 1998 injury and her more recent complaints. This opinion appears to be based upon an understanding that the back symptoms did not originate with the September 1998 injury, but instead developed substantially later. Claimant's testimony places the onset of her right buttock and back symptoms much sooner.

7. It appears that Dr. MacMillan replaced Dr. Smith as the authorized treating physician. He released claimant to return to work on June 3, 1999. Because wearing the belt caused claimant back pain and right leg pain and numbness, she was moved from the security guard position to a greeter and computer operator position in the Player's Club area. Nevertheless, claimant has not been able to work full time due to pain.

8. Mindful of this subsequent history of events that were contemporaneous with symptomatic changes and/or aggravations, Dr. Smith on January 28, 2000, nevertheless opined "that her current trouble dates back to her work injury, and, therefore, surgery would be secondary to her work injury."

9. On July 2, 1999 Claimant was examined by orthopaedic surgeon Dr. John A. Lynch. Dr. Lynch opined that claimant's initial complaints of right groin pain were probably referred pain consistent with his diagnosis of spinal stenosis at L4-5 and L5-S1 with radiculopathy. He concurred with Dr. Smith's recommendation for surgery.

10. At the conclusion of the August 25, 1999 preliminary hearing, Judge Benedict ordered an independent medical examination to be performed by orthopedic surgeon Glenn M. Amundson, M.D., and specifically requested his opinion on causation. Dr. Amundson, in his December 14, 1999 letter addressed to respondent's counsel said: "Based on my review of Ms. Rose's medical history, as presented both in the medical records and by her, directly, I feel the current need for back treatment is a direct result of September 4, 1998 industrial injury."

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish his/her right to an award of compensation and to prove the conditions on which

that right depends.² "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."³ The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.⁴

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁵ It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.⁶ Although claimant's condition worsened, the Appeals Board finds that there was neither a new injury nor an intervening accident following her work related accident. The current back injury, therefore, is compensable as a direct and natural consequence of the original September 4, 1998 accidental injury at work.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order entered by Administrative Law Judge Bryce D. Benedict on February 3, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

c: Bryan W. Smith, Topeka, KS
Michael J. Haight, Overland Park, KS

² K.S.A. 44-501(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

³ K.S.A. 44-508(g). *See also* In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 44-501(g).

⁵ Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

⁶ Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973). *See also* Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).

Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director